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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,471	12/12/2003	Mark William Reents	ReeNts -Moye	4310

7590 11/16/2004
MARK W REENTS
P.O. Box 794
Waycross, GA 31502

EXAMINER

PAPE, JOSEPH

ART UNIT PAPER NUMBER

3612

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,471

Applicant(s)REENTS, MARK WILLIAM **Examiner**

Joseph D. Pape

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/12/03</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings filed on 12/12/03 are obviously informal and include many instances of thickened lines which overlap when showing details of the invention. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference numerals 50, 56, 58, 62, 74, and 76 used on page 6 and throughout the specification do not appear in the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the

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applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "latching means" in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Specification

4. The disclosure is objected to because of the following informalities:

On page 11, line 4, the phrase "is flat and hinged made" is awkward and unclear. The use of the terms "first level" and "second level" on page 1 is unclear from the drawings. On the second line from the bottom, it is thought that "65" should be changed to --64--.

On page 13, line 7, it is thought that "18" should be changed to --20--. On lines 14-15, the accessory base track is stated to have grooves 96, 98, and 100 when these grooves are believed to relate to a different embodiment. On line 16, it is thought that "11" should be changed to --12-- and on line 17 it is thought that "12" should be changed to --13--, "13" should be changed to --11-- and "advance" should be changed to --advanced--.

In the description of the embodiment of Figures 11-13, page 14, lines 21-22, the description of the "rigid" cap sections being able to "flex" is an apparent contradiction. Further, it is not exactly clear how flexible cap sections are able to achieve a lower position when retracted.

On page 14, line 4, "completed" is misspelled. Lines 8 and 9 are awkwardly phrased.

Appropriate correction is required.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no support for the "latching means" in claim 1 and "convertibility means" in claim 3.

Claim Objections

6. Claims 1-13 are objected to because of the following informalities:

In claim 1, line 1, it is thought that "a" should be changed to --an--and --a-- should be added before "pick-up" for clarity. On line 4, "A" should be small case. On line 14, it is thought that "a" should be changed to --an--for clarity. On lines 17 and 19, "slidably" is misspelled.

In each of claims 2-13, line 1, the initial phrase of the claims should be changed to --The convertible cap apparatus of claim--for proper form and consistency.

In claim 2, "a" should be changed to --an--for clarity.

In claim 4, line 2, --a--should be added after "to".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-13 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

There is awkward, indefinite and functional language throughout the claims instances of which are too numerous to point out each and every one. However, the Examiner has provided below detailed examples of many of the instances of indefiniteness as a guide for applicant to amend the claims.

In claim 1, line 2, "length, width and height" appears but is not related to a feature of the invention which is indefinite. On line 4, the recitation of "manual and powered" is unclear in that such moving means are only set forth in the alternative in the disclosure. Also, on line 5, the recitation that the cap sections include "fixed and movable" side walls is inaccurate in that some cap sections are movable and some are fixed but none are both. Also, on this line it is unclear that the side walls of adjacent cap sections overlap and not side walls of a given cap section. On lines 6-7, the use of the term "continuously" in the phrases "continuously positional" and "continuously variable vertical locations" is unclear in that the disclosure sets forth discrete positional changes defined by ball guides and lock holes not "continuous" positional changes. On lines 6-7,

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the recitation of the cap sections being positional at variable vertical locations refers to the embodiment of Figures 11-13 which includes side walls with flexible side walls to function. The recitation on line 1 of "rigid" cap sections is contradictory to this recited embodiment. On line 8, it is unclear in what manner the cap sections are considered to extend and retract "integrally". The use of the term "continuously" on lines 9 and 10 is unclear in that disclosure sets forth discrete positional changes defined by ball guides and lock holes not "continuous" positional changes. Other similarly unclear uses of the term "continuously" also appear in the claim. On line 11, "at least one said independent cap section portion" has no clear antecedent basis. It is thought that this phrase should be changed to --at least one of said plurality of independent cap sections--. A similar instance of lack of antecedent basis appears on lines 13, 18 and 21. On lines 11-12, the recitation of a "fixed and vertically adjustable end wall or front wall" is unclear in that such recitation is inaccurate. There are two transverse walls of the invention the front wall is fixed and the end wall is vertically adjustable by pivoting upward to an opened position. Neither the front wall nor the end wall is both fixed and vertically adjustable as recited. Also, there is no transverse wall that is "continuously positional at a number of continuously variable vertical locations" as set forth on lines 12-13. The recitation on line 13 of a "cap door" is unclear in that an "end wall" has already been recited on lines 11-12 and it is thought that the only end wall is the "cap door". On line 14, the recitation that the cap door has an access opening therein is inaccurate in that the door selectively closes an access opening but does not include one. On line 17, "track or guide members" and on line 19, "slide members" have no clear antecedent basis. On

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line 21, the recitation of "door means" in addition to the previously recited "end wall" and "cap door" is unclear in that all three features appear to be directed to a single element of the invention. On line 22, "enclosure means" has no clear antecedent basis.

In claim 2, the last two lines are redundant in that such recitation already appears on the last two lines of claim 1.

In claim 4, the last two lines recite "said end wall or said cap door..." but then no limitation follows.

In claim 5, the last line, it does not follow that the selection of a material for a solid end wall, front wall or cap door results in "ventilation means".

In claim 7, the listing of embodiment names with no structural features making up each embodiment does not result in a complete operative device. Further, claim 1, as understood, appears to be directed to the embodiment of a "smooth" cap of Figures 11-13 already and as such the recitation of elements of differing embodiments would result in an inoperative hybrid embodiment.

Claim 8 is generally vague and indefinite in that no structure is positively recited therein.

Claims 9-13 are replete with awkward, functional phraseology and claims 9-12 recite features of various embodiments which result in an inoperative hybrid collection of features when combined with features set forth in claim 1.

Allowable Subject Matter

9. Claims 1-13 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

10. The following is a statement of reasons for the indication of allowable subject matter: The indication of the allowance of claim 1, as well as the claims depended thereon, is based on the recitations in claim directed to the embodiment of Figures 11-13, as best understood due to the presence of indefinite language. In addition to the recitations of the basic features of the invention in claim 1, the recitation of the cap sections being positional at a number of vertical locations in addition to being longitudinally positional in an overlapping manner and track means interacting with guide members on the cap sections for vertical and longitudinal movement of the cap sections relative to the track means is not present in the prior art of record.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references show telescoping cover arrangements with features similar to those of the current invention. Many of these arrangements include overlapping sections, seal, guide tracks and powered actuating means. Also,


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Hershberger discloses an arrangement with slides on the cap sections for guidance see Figures 3 and 7.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Pape whose telephone number is (703) 308-3426. The examiner can normally be reached on Tues.-Fri. (6:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joseph D. Pape
Primary Examiner
Art Unit 3612
11/13/04

Jdp

November 12, 2004